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BEFORE THE  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

REGARDING  
DUAL CITIZENSHIP, BIRTHRIGHT CITIZENSHIP, AND THE MEANING OF SOVEREIGNTY  
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Good morning Mr. Chairman, Representative Jackson-Lee, and Members of the Subcommittee. Thank you for the opportunity to testify before you today on the issues of dual and birthright citizenship.

For the record, I am Rusk Professor of International Law at the University of Georgia Law School, where I teach subjects relating to immigration and international law. I am a former law clerk to Judge Stephen F. Williams on the U.S. Court of Appeals for the D.C. Circuit and to Justice David H. Souter of the Supreme Court of the United States. I have also served as an Attorney-Adviser in the Office of the Legal Adviser, U.S. Department of State, as well as Director for Democracy on the staff of the National Security Council. I was a recipient of a 1988-89 Open Society Institute Individual Project Fellowship to study the law of U.S. citizenship. I was a participant in the 2001-02 German Marshall Fund project on dual citizenship, and have written widely on issues relating to citizenship and nationality.\*

The last fifteen years has witnessed a dramatic increase in the number of individuals globally who hold more than one nationality, and the United States has been no exception to this trend. Where dual citizenship was once condemned by most countries of the world, and was largely an anomaly insofar as it

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\* See, e.g., Questioning Barriers to Naturalization, 13 Georgetown Immigration Law Journal 479 (1999); The Citizenship Dilemma, 51 Stanford Law Review 597 (1999); Dual Nationality and the Meaning of Citizenship, 46 Emory Law Journal 1411 (1997); Political Rights and Dual Nationality, in RIGHTS AND DUTIES OF DUAL NATIONALS: EVOLUTION AND PROSPECTS (David Martin & Kai Heilbroner eds., 2002); Mandated Membership, Diluted Identity: Citizenship, Globalization, and International Law, in GLOBALIZATION AND CITIZENSHIP (Alison Brysk & Gershon Shafir eds., 2003); Embracing Dual Nationality, in DUAL NATIONALITY, SOCIAL RIGHTS AND FEDERAL CITIZENSHIP IN THE U.S. AND EUROPE (Randall Hansen & Patrick Weil eds., 2002).

was tolerated at all, it is now accepted by a growing majority of states.

There is something about dual nationality that seems to provoke a reflexive distaste. Some Americans might be astonished, and perhaps appalled, to learn of dramatic trends toward the near-complete toleration of dual citizenship. But that astonishment and opprobrium will not suffice to justify the suppression of dual nationality. Such disfavor is no more than an echo of a time in which dual nationality did pose a serious threat to the peace of nations. As that threat has evaporated, accepting dual nationality may now be in the affirmative national interest — by way of facilitating the global dispersion of democratic values — as well as a matter of affirming the full breadth of individual identity. It is, in any case, too late for the entrenchment of dual nationality to be reversed. Dual nationality has become a fact of globalization.

It has not always been so. Nationality was once a singular characteristic. A defining feature of nation-states and modern international relations has been the exclusivity of national identification and the notion that individuals should have one — and only one — nationality. Just as the nation-states of the 19th and 20th centuries carved up the world's territory to the end that all was spoken for but none shared, so too did they try to allocate the world's population.

And they had some success: Although migration has always resulted in some cases of dual nationality, until recently dual nationality remained an anomaly, a status disfavored to the point that it was considered immoral. The venerable American diplomat George Bancroft observed in 1849 that nations should "as soon tolerate a man with two wives as a man with two countries; as soon bear with polygamy as that state of double allegiance." In 1915, Teddy Roosevelt derided the "theory" of dual nationality as "a self-evident absurdity." Dual nationality was thought to represent an intolerable division of the loyalty owed to one's country. Almost all states canceled citizenship upon naturalization elsewhere; until the late 1960s, U.S. law imposed a hair-trigger standard on dual nationals under which American citizenship was forfeited for so much as voting in another state of nationality.

But this antipathy toward dual nationality is fast eroding, and the incidence of dual nationality is now growing at an explosive pace. Today, many are born with dual nationality, the product of binational parentage. Others acquire dual national status with new citizenships, retaining birth citizenship upon naturalization in another country. In both cases, states are moving to recognize, rather than to quash, the retention of other nationalities. Some "sending" states (that is, states with high emigration) are actually encouraging the acquisition of other nationalities. Mexico, the Dominican Republic, Italy, India, the Philippines, and Thailand are among many recent additions to the list of those countries allowing birth citizens to retain nationality when they naturalize elsewhere.

Even in most "receiving" countries, including the United States, the quiet rise in dual nationality has attracted little controversy; the prospect of millions of dual Mexican-American nationals concentrated on the southern border, no less, has failed to provoke any policy initiatives for deterring dual nationality. As globalization fuels migration, and states no longer attempt to suppress dual nationality, that status is now almost commonplace. Though some still decry the status, these opponents have failed to attract any

significant public attention or following.

### Roots of Disfavor

To the extent that popular distaste for dual nationality can be elaborated into an argument, it usually hinges on the impossibility of divided loyalties. In the popular mind, dual nationality has been loosely identified with shadowy fifth columns and saboteurs.

The historical explanation is far more prosaic. The origin of the norm against dual nationality had nothing to do with spies and little to do with loyalties; rather, it was rooted in the intractable challenges that dual nationals posed to the institution of diplomatic protection. In the old world, the rights of individuals depended entirely on nationality, and sovereigns could do as they pleased with their own. With respect to a dual national, the right of one state to protect its citizens from mistreatment by another ran up against the other state's well-established sovereign discretion over its own nationals.

Disputes over the treatment of dual nationals often posed serious irritants in bilateral relations of the 19th and early 20th centuries. At one time or another, such disputes were central to U.S. relations with all the major European powers.

A frequent cause of such disputes was the refusal of the "sending" states of the day (including Great Britain, Italy, and the German principalities) to recognize the capacity of individuals to transfer nationality — that is, to abandon their original nationality and become Americans. For instance, immigrants who had naturalized in the U.S. were, during visits to their homeland, prosecuted for failing to satisfy military service obligations in their country of origin. U.S. diplomats would attempt to shield Americans from such imposition against the vigorous objections of the other country of nationality.

Whether deserving of protection or not, dual nationals posed an intolerable threat to relations among states for whom warfare was often a viable policy option. The War of 1812 was in large part provoked by Great Britain's attempt to enlist U.S. citizens whose naturalization it did not recognize — in other words, a problem of dual nationality — and U.S. foreign relations compilations for the 19th and early 20th century are replete with high-level disputes relating to dual nationals. By way of a solution, the U.S. negotiated treaties (including the so-called Bancroft conventions of the 1860s and 1870s, negotiated with several German and Scandinavian countries) providing for the attribution of sole U.S. nationality for immigrants, with a reversion to sole original nationality upon permanent return to a home country. These bilateral arrangements found a backstop in U.S. nationality law, under which a variety of acts (including voting, holding office, serving in the armed forces, or naturalizing in another country) resulted in the automatic loss of American citizenship.

Through the middle of the 20th century, dual nationality in any sort of active sense was thus effectively prohibited under U.S. law. But this regime (also adopted by a vast majority of other countries and not significantly softened until the last decade) had nothing really to do with loyalty or allegiance. In

some cases, Americans holding passive nationality (through parentage) in Axis nations simply chose the other side when it came to military service, but with little complication (they simply lost their U.S. citizenship in the act of enlisting elsewhere). There appears not a single notable instance of a dual national having engaged in espionage — perhaps not surprisingly, as any real spy would be foolish to advertise the competing attachment.

### Possible and Desirable

If the rule against dual nationality was founded in issues of diplomatic protection, that foundation has been washed away. In today's world, of course, sovereigns cannot do as they please with their subjects—that's what human rights are all about. Other countries now protest the treatment of individuals regardless of nationality. Against this backdrop, dual nationals present little more of a threat to bilateral relations than do mono-nationals. In contrast to the 19th and early 20th centuries, it is today unlikely that a dual national could by fact of his or her status rupture diplomatic relations between states. Indeed, there may be some benefit to encouraging the maintenance of dual nationality, at the same time that accepting the status allows individuals to realize their complete identities.

Objections to dual citizenship are sometimes posed in terms of the possibility of diluting full civic engagement in more than one country; in terms of the difficulty of following different cultural traditions; and in terms of the possibility of conflicting attachments and loyalties. In fact, dual citizenship poses few problems along any of these metrics. Indeed, accepting dual citizenship is now not only in the interest of many individual Americans but also in the interest of the nation as a whole.

### Engagement and Knowledge

First, individuals can be fully engaged and knowledgeable citizens of more than one country. Political and civic capacities are not a zero-sum proposition. All of us have associational involvements aside from our participation in national affairs as citizens, and it has never been thought that such additional memberships detract from citizenship. Quite the contrary. Involvement in state and local politics does not preclude responsible participation in national processes. Likewise, participating in the affairs of another country does not categorically preclude responsible participation in the affairs of this one. Of course, if one spends all one's time at work, or on church affairs or volunteering for the Red Cross, or on local matters, there may be little time left over for national politics — the same might hold true where a dual national concentrated his or her energies on the other country of nationality. But we don't cancel the citizenship of the Red Cross volunteer; the incapacity objection against dual nationality thus falls short. Dual citizens can be responsible participants in both countries of nationality.

Dual citizens can also, perhaps even more clearly, remain informed participants in multiple polities. The communications revolution has settled that question. The Internet now provides easy global access to local media, so that even the isolated individual can stay in touch with homeland developments. Of course, most emigrants tend physically to congregate in some forum (often living in the same neighborhoods in their

country of settlement). In practice, the channels of information are multiple, and sometimes almost as dense as they would be back home.

### Maintaining Different Traditions

If the question here is whether individuals can follow two different cultural traditions, it is beside the point. Mono-national Americans follow vastly different cultural traditions among themselves. It is not a requirement of U.S. naturalization (as it was until recently in Germany) that one have culturally assimilated; there is no shared American canon (an equivalent to Schiller, Goethe, and Wagner) that is essential to the American identity. Of course, one can — many do — continue to follow the cultural traditions of one's homeland even if one terminates the formal citizenship tie to that country. That, indeed, is a part of our national tradition.

It would be quite another thing simultaneously to maintain different political traditions. One can hardly be an old-fashioned monarchist and a democrat at the same time. To the extent that citizenship is mostly about political rights (that is what marks the primary difference between the status of permanent residents, aliens, and citizens), the political traditions argument might have held sway against immigrants from the Sicilian village or the Lithuanian shtetl. But this objection has largely been overtaken by the global trend in favor of democratic governance. Old-fashioned monarchists have gone the way of the dodo bird, and understanding of basic democratic governance is now nearly universal. There are, of course, some old-fashioned dictators still around. But those who hale from such countries do not typically subscribe to totalitarianism. Even when they wish to retain their homeland citizenship, it is out of attachment to the country, not to the political system. Of course, most who emigrate from repressive political systems are doing so precisely because they oppose their homeland regimes. There is only one political tradition today, and dual nationals will be as much a part of it as their mono-national counterparts.

### The Possibility of Conflicting "Core" Attachments

That leaves the most prominent contemporary objection to dual nationality: the specter of an electoral fifth column. As the political columnist and ardent dual-nationality critic Georgie Anne Geyer wrote of Mexico's recent acceptance of dual-nationality status (which could, at least in theory, create a population of several million dual Mexican-American citizens), it "creates a kind of Mexican political lobby of newly enfranchised citizens of Mexican descent whose cultural allegiance would remain in Mexico." Similarly, the restrictionist Federation of Americans for Immigration Reform (FAIR) claims that the Mexican government is "attempting to maintain the allegiance of a huge voting bloc in U.S. elections."

But to what end? Globalization and the end of the Cold War have greatly reduced the number of issues on which states suffer distinctly conflicting interests. On trade issues, for example, Mexican national interests in most cases coincides with the interests of American consumers (leaving aside the improbability that dual nationals would command significant legislative representation). In that case, can it be deemed somehow against the "national" interest to vote in a way calculated to benefit another country?

Of course, the citizenship tie will hardly be determinative of voting behavior. Americans often vote with an eye to the interests of their ethnic community; indeed, that is at the core of our political tradition. Mexicans who naturalize as U.S. citizens and who abandon their Mexican nationality in the process (which used to be the case by operation of Mexican law) could, of course, continue to vote Mexican interests even in the absence of the formal link. On the other side, it seems vastly to overestimate the current significance of citizenship to assume that an individual who retains alternate nationality will necessarily vote accordingly. Citizens are hardly a docile herd, ready unthinkingly to do the bidding of their governmental masters under solemn oaths of loyalty. Emigrants, especially, tend not to accept the command of homeland rulers, and their political conduct is likely to be driven more by other interests than those of their alternate nationality.

### Dual Citizenship in the Individual and National Interest

Dual nationality is not only possible; it poses affirmative benefits. This is true whether one considers the issue as one of national interests or of individual rights.

From a national interests perspective, dual citizenship presents a tool in solidifying the global reach of our constitutional values. A naturalizing alien who gives up his or her original citizenship is limited in the extent to which it is possible thereafter to influence the political processes of the homeland. But that seems counterproductive to the American national interest insofar as we may want him to exercise such influence. Naturalizing aliens are likely to absorb American democratic mentalities. If they maintain dual citizenship, they will be able to put those democratic tendencies to work back home. One can plausibly assert as evidence that the participation of dual nationals of Latin American and Caribbean countries resident in the United States has been a significant factor in successful democratic transitions. So even a traditional policy calculation of dual nationality points to accepting dual nationality.

That calculation is stronger still when considered from a rights perspective. Nationality may be an instrument of state control, but it is also an important form of individual identity and free association. Restrictions on dual nationality thus comprise restrictions on identity, as are restrictions on other forms of association; denying a person's full identity both as American and as British or Israeli or Dominican is not so far from denying someone's identity as an American and as a member of a religion or political group or even a family. The last category is especially important in this context. For those born with dual nationality to parents of a different nationality, a rule against dual-national status forces the child to choose between the two. In the absence of any significant cost to society in the maintenance of dual nationality, forcing that choice — and the loss it may well represent to the individual — seems unjustifiable.

### Here to Stay

And so what of such solemn terms as "loyalty" and "allegiance" that have tended to drape discussions of dual nationality? National citizenship may now resemble something akin to membership in other groups — religions, corporations, localities, and the innumerable other elements of civil society. Nationality no longer defines individual identities in the way that it used to, and perhaps nations can no

longer jealously demand that their membership remain a monogamous one. Maintaining membership in another national community may have emerged to be no more threatening than maintaining membership in the Catholic Church, the Knights of Columbus, the Sierra Club, or Amnesty International.

The deeper significance aside, it seems clear that multiple nationality is here to stay. U.S. law now fully tolerates the status. Americans who naturalize elsewhere retain their U.S. citizenship unless they really want to renounce it (a practice now protected under constitutional rulings of the U.S. Supreme Court); foreigners who naturalize in the U.S. may retain their original nationality, to the extent permitted by the country of origin (the oath of naturalization, under which new citizens are required to renounce absolutely allegiance to foreign powers, has never been enforced). Together with those born with dual nationality, the number of dual nationals is growing dramatically. It is remarkable how little opposition has surfaced in this country to dual nationality in the face of this quiet explosion. That, indeed, may be explained by the fact that dual citizenship is increasingly commonplace, and that more and more Americans have nephews and nieces, siblings and other family members, friends, neighbors and co-workers, who are dual citizens and also good Americans. And more Americans of a broadening range of national origins are themselves acquiring the status, not just among new immigrant groups, but including many among those whose Irish, Italian, Jewish, and British ancestors came to the United States long ago.

Nor is there any clear mechanism available for policing against multiple citizenship even if the will emerged to undertake some sort of enforcement action. The Supreme Court's protection of the rights of American citizens to retain their citizenship even if they acquire an alternate citizenship effectively precludes legislative action against the status. For the United States to require the termination of original citizenship upon naturalization as an American would present an administrative nightmare, and deter the assimilation of many individuals who are already in our midst as permanent resident aliens. On the contrary, we should be welcoming new Americans even as they maintain their homeland ties in the great American tradition of pluralist identities. That, in any case, is the future we face. Thank you for this opportunity to present my views on this important subject.